

This letter discusses sales in interstate commerce that originate in Illinois. 86 Ill. Adm. Code 130.605. (This is a GIL).

June 12, 2008

Dear Xxxxx:

This letter is in response to your letters dated January 14, 2007 and March 19, 2008, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

On 12th May 2006 I purchased a used motorcycle from ABC in CITY. The intention was to ride the vehicle to my brothers [sic] address in California via route 66. I arrived at my brothers [sic] address on June 2nd 2006.

On purchasing the vehicle I purchased 3 consecutive temporary tags to cover period whilst crossing America. California Sales tax was added at time of purchase, the theory that the motorcycle was being 'exported' to California.

On arrival in California the motorcycle was exported to the COUNTRY. The vehicle was not registered in California.

Following importation to the COUNTRY, Import Duty has been charged on the vehicle. In September I applied to the California Board of Equalization for reimbursement of the sales tax paid. I have very recently been informed by PERSON of the California Audit Determination and Refund Section that I should be applying to Illinois for refund of the sales tax. Further the COUNTRY Customs and Excise informs me that I should be eligible for refund from the Illinois sales tax department, since the vehicle has been exported. Apparently the USA and COUNTRY have a reciprocal agreement that any sales tax /VAT is reimbursed should that article be exported cross international borders. In fact I have had American friends visit me and buy articles. At the airport in COUNTRY any sales tax (VAT) charged is refunded on departure.

I enclose photocopies of all relevant documentation. Further you can contact PERSON (the California case no id is #). I therefore request refund of this payment. I enclose all photocopies of relevant documentation for your perusal. I look forward to your reply at the above address or on my email.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the seller's gross receipts from such sales made in the course of such business. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. Mere possession in Illinois is considered a use. Consequently, if the purchase occurs in Illinois, the purchaser must pay the Use Tax to the retailer. Please note that a sale is taxable even though a purchaser that receives physical possession of the property in this State immediately transports the property out of this State for use outside the State. See 86 Ill. Adm. Code 130.605(a)(2).

Sales of property originating in Illinois are specifically addressed at 86 Ill. Adm. Code 130.605. Subpart (c) of this regulation states that Retailer's Occupation Tax does not apply where sellers ship goods by carrier or by mail, according to the terms of agreements with purchasers, and the seller delivers the goods from a point within Illinois to a point outside Illinois and the goods are not to be returned to Illinois. Such sales are considered to be sales in interstate commerce and are exempt from Illinois and local Retailers' Occupation Tax.

However, sales are not deemed to be in interstate commerce if the purchaser or his representative receives the physical possession of the property in Illinois, even if such property is immediately transported outside of Illinois. See 86 Ill. Adm. Code 130.605(a)(1) and (2). An exception is made for motor vehicles when the motor vehicle is delivered to a nonresident of this State and a drive-away permit for the purposes of removing the motor vehicle from the State has been issued for that vehicle under the provisions of subsection (b)(1) of Section 130.605. This exemption for motor vehicles does not apply, however, if the state in which the motor vehicle will be titled does not allow a reciprocal exemption for a motor vehicle sold and delivered in that state to an Illinois resident but titled in Illinois. 86 Ill. Adm. Code 130.605(b)(1)(A). California is one of the states that does not allow a reciprocal exemption. If the buyer's address is listed as being in California on the transaction return, the purchaser is presumed to title that vehicle in that state and is subject to tax in Illinois at the rate of 6.25%.

Claims for credit and refunds are available when a person shows that he paid tax to the Department as a result of a mistake of fact or law. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a refund. It is the retailer (in this instance, the motorcycle dealer) who remitted the tax to the Department and who is able to file a claim for a refund, although he is not required to. See 86 Ill. Adm. Code 130.1501. Under Illinois sales tax laws, retailers are not required to file claims for credit. The Department has no authority to compel sellers to file a claim for credit. Whether or not a seller refunds the taxes paid and files a claim for credit with the Department is a private matter between the seller and the purchaser.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore
Associate Counsel

SJM:msk